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Docket number _____

In the United States Supreme Court

Brian Homer March and Victoria Baca March

versus

Internal Revenue Service

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit - appeal number 02-2087

Petition for Writ of Certiorari

Brian Homer March and Victoria Baca March, Pro se
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Questions presented for review

Questions to be resolved by The United States Supreme Court: What has the Secretary of the Treasury of the United States determined that the individual United States Citizen, domiciled within the United States, deriving wages from personal labor, can ask for or demand as evidence of an income tax due and owing the United States Treasury where the evidence proffered is in conformity with published code and consistent with The Federal Rules of Evidence? When did the Secretary make and publish the determination in the Code of Federal Regulations? Whether the Tenth Circuit Court of Appeals has decided a question of compelling public interest? Whether the Tenth Circuit Court's ruling contravenes the authority of a United States Government Agency, contravenes the Code of Federal Regulations, usurps the authority of the Secretary of the Treasury of the United States violating the separation of powers, and conflicts with extant authority on the subject matter? Whether the audit by the Government Accounting Office verified that the IRS RACS 006 is not consistent with the requisites of the Code and rules of Evidence and is insufficient to verify an individual's income tax liability?

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Code occurring at 26 U.S.C.A. § 301.6203-1 of the Code of Federal Regulations provides that evidence that an individual citizen, domiciled within the United States, deriving wages from personal labor, becomes subject to requirement that sums be deposited with the Treasury when the summary record of assessment identifying that citizen is signed by an assessment officer. The Code further prescribes that the summary record, through supporting documents, must contain the following: (1) identification of the taxpayer; (2) character of liability assessed; (3) taxable period, if applicable; (4) and amount of assessment. The Code also provides, upon request of the taxpayer, the Secretary shall furnish the taxpayer a copy of the record of assessment. Without production of the summary record of assessment, the individual citizen is deprived of basic forensic devises to test the validity of the alleged liability. Substantial authority establishes that IRS form 23-C is the de facto assessment. See Internal Revenue Manual 5312(1), MT 5300-1 (11-15-85), *United States v. Van Griffin*, 874 F.2d 634, 638 (9th Cir. 1989)(government manuals admissible as party admissions under Fed.R.Evid. 801(d)(2)(D)), *Meyersdale Fuel Co. v. United States*, 44 F.2d 437, 443 (Ct.Cl. 1930), *Brafman v. United States*, 384 F.2d 863 (5th Cir. 1967), *Stallard v. United States*, 806 F.Supp. 152, 158 (W.D.Tex. 1992), *Ianelli v. Long*, 329 F.Supp. 1241, 1242 (W.D.Pa. 1971), *Planned Investments, Inc. v. United States*, 881 F.2d 340, 343 (6th Cir. 1989), *Robinson v. United States*, 920

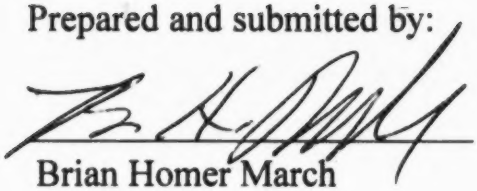
F.2d 1157, 1158 (3rd Cir. 1990). The Tenth Circuit Panel disregarded the rule of precedent and usurped the authority of the Treasurer by ruling, in effect, that no article conforming to Code exists to show that an individual citizen is a taxpayer owing an income tax to the treasury. The effect of the decision of the Tenth Circuit Panel is to deprive the individual citizen of any means whatsoever to validate an alleged income tax obligation clearly placing virtually every agent acting on behalf of the Internal Revenue Service in jeopardy of criminal prosecution and civil liability for violation of 26 USC 7214(a). The decision by the Tenth Circuit Panel resulted from the panel's acceding to the demands of the Internal Revenue Service in opposition to Brian Homer March and Victoria Baca March's simple request for Code required information. In response to the Marchs' requests, unknown agents proffered documents identified as "RACS 006's." The Tenth Circuit Panel ruled that the form RACS 006 satisfies the statutory and regulatory notice requirements. Presumably, the Tenth Circuit Panel meant that the RACS 006 is the de facto evidence which the individual citizen, domiciled in the United States, deriving wages from personal labor can rely on to validate an income tax due and owing the United States Treasury. This honorable court is noticed: (1). Mr. Gene Dodaro, Assistant Comptroller General, Accounting and Information Management Division, reporting to Congress, testified that the RACS 006 could not serve as the assess-

ment for reason that the RACS 006 does not contain the required information such as type of tax, (2). The Government Accounting Office report found that the information contained in Internal Revenue Service files contained discrepancies to the effect that auditors were deprived of means to determine what, if any, of the information contained in the Internal Revenue Service files was reliable, (3). The Government Accounting Office report found that the Internal Revenue Service lacked sufficient security to prevent unauthorized browsing of individual files and unauthorized changes to the individual files without detection, and (4). The Tenth Circuit Panel did not take judicial notice of the GAO/T-AIMD-96-56 report which the Tenth Circuit Panel knew was for years contemporaneous with those years the Internal Revenue Service subjected the Marchs to an alleged tax liability. This court is noticed: authorities cited by the Tenth Circuit Panel all were either supplanted by the GAO report or are in contempt of the Congressional Report.

Conclusion and remedy sought

Determination by this court that the Tenth Circuit Panel's ruling contravenes the GAO report, usurps the rule making authority of the Secretary of the Treasury, and conflicts with the rule of precedent warrants reversal of the Tenth Circuit Panel's determination that the RACS 006 is sufficient to serve as the assessment and remand to the lower court for further proceedings including dismissal for failure of the IRS to produce a summary record of assessment.

Prepared and submitted by:



Brian Homer March

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NOTARY

_____

Commission expiration

and _____

Victoria Baca March

_____

NOTARY

_____

Commission expiration

Certificate of mailing

I, Brian Homer March, certify that March 27, 2004, I mailed Three true and correct copies of the foregoing petition for certiorari to:

David C. Iglesias & Manual Lucero
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Brian Homer March

NOTARY

Commission expiration

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Supreme Court, U.S.
FILED

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Docket number _____

In the United States Supreme Court

Brian Homer March and Victoria Baca March

versus

Internal Revenue Service

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit - appeal number 02-2087

Appendix to Petition for Writ of Certiorari

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UNITED STATES BANKRUPTCY
COURT DISTRICT OF NEW MEXICO

In re: Brian H. March and
Victoria B. March,

Debtors. No. 7-98-14550 MA

ORDER DENYING DEBTORS' OBJECTION TO PROOF OF CLAIM OF INTERNAL REVENUE SERVICE

THIS MATTER comes before the Court on Debtors' Objection to the Proof of Claim Filed by the United States of America Internal Revenue Service (IRS). It is undisputed that the Debtors have not filed tax returns for the years 1992, 1993, 1994, 1995 and 1996. As the basis for their objection, Debtors argue that the IRS had no authority to file substitute returns for those years and did not follow statutory requirements to assess the taxes owed. The Debtors ask this Court to deny the IRS's claim in its entirety. The Court having reviewed the pleadings, briefs and otherwise being fully informed and advised finds:

1. Debtors filed their bankruptcy on July 23, 1998 and were granted a discharge on October 28, 1998.

2. On April 29, 1999, the IRS filed a proof of claim against Debtors' in the amount of $72,650.18 as an unsecured priority claim under 11 U.S.C. 507(a)(8). The remainder of its claim, $11,051.85 in penalties and interest thereon is classified as a general unsecured claim.

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Nothing offered by the Debtors calls this evidence into question.

7. In the context of an objection to claim, the burden is on the objecting party to negate the prima facie evidence of the validity and amount of the claim by refuting one of the facts serving as the basis for the filed claim. Fed. R. Bankr. P. 3001(f); *In re St. Johnsbury Trucking Company, Inc.* 206 B.R. 318, 323 (Bankr. S.D.N.Y. 1997). The Debtors have failed to meet this burden and have not sufficiently refuted the validity of the assessments made by the IRS. No other evidence of a mistatke by the IRS was presented as the Debtors have failed to file theri returns for the years in question. The Court will therefore deny the objection.

IT IS ORDERED that the Objection to Claim of the United States Internal Revenue Service is hereby DENIED.

MARK B. MCFEELEY

UNITED STATES BANKRUPTCY JUDGE

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I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties, on the date file-stamped above.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:BRIAN HOMER MARCH and No.7-9814550MA

VICTORIA BACA MARCH,
Debtors.

ORDER GRANTING IN PART AND DENYING IN PART DEBTORS' MOTION FOR RECONSIDERATION OF ORDER DENYING DEBTORS' OBJECTION TO PROOF OF CLAIM OF INTERNAL REVENUE SERVICE

THIS MATTER came before the Court on the Debtors' Motion for Reconsideration of Order Denying Debtors's Objection to Proof of Claim of Internal Revenue Service ("Motion for Reconsideration"). In their Motion for Reconsideration, Debtors bring to the Court's attention that they have in fact filed tax returns for the years 1995, 1996, and 1997, in conflict with the Court's finding that the Debtors have not filed tax returns for the years 1992, 1993, 1994, 1995 and 1996. The Motion for Reconsideration should, therefore, be granted to the extent the Court's findings of fact should be revised to correct this error.

The Debtors also point out that they supplied the Internal Revenue Service with unsigned

copies of tax returns for 1992, 1993 and 1994. "An unsigned return is no return at all." *Cohen v. United States (In re Cohen),* 198 B.R. 382, 388 (Bankr.S.D.Fla. 1996)(citing 26 U.S.CA. §§ 6061, 6065; 26 C.F.R. § 1.6061-1(a); *Vaira v. Commissioner,* 52 T.C. 986, 1969 WL 1731 (1969)). Debtors' assertions, therefore, do not invalidate the Court's findings with regard to the returns for the years 1992, 1993 and 1994. Nor do the Debtors' assertions that they filed tax returns for the years 1995, 1996 and 1997 alter the Court's conclusions.

The Motion for Reconsideration also asserts that the failure of the Internal Revenue Service ("IRS") to produce a form 23C renders the IRS's claim for unpaid taxes invalid. The Court has already addressed this argument. The cases Debtors cite in their Motion for Reconsideration do not warrant an alteration of the Court's prior ruling.

WHEREFORE, IT IS HEREBY ORDERED, that the Motion for Reconsideration is granted, in part, to revise the Court's findings of fact with regard to the submission of tax returns.

ORDERED FURTHER, that the Court's findings of fact contained in the Order Denying Debtors' Objection to Proof of Claim of Internal Revenue Service are hereby revised to reflect that the Debtors have not filed tax returns for the years 1992, 1993 and 1994.

ORDERED FINALLY, that the Motion for Reconsideration is herby denied in all other respects.

MARK B. McFEELEY
United States Bankruptcy Court

I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties, on the date file-stamped above.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BRIAN HOMER MARCH and
VICTORIA BACA MARCH,
Appellants,
v. CIV 01-895 LH/KBM
INTERNAL REVENUE SERVICE,
Appellee.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This is a bankruptcy appeal under 28 U.S.C. § 158(a), where this Court review the bankruptcy court's legal determinations *de novo* and its factual findings for clear error. *E.g., In re Hedged-Investments Associates, Inc.,* 84 F.3d 1267 (10th Cir. 1996). The matter was referred to me for a recommended disposition. The factual background is fully set out in the parties briefs and the record on appeal and incorporated herein by reference.

The IRS filed a proof of claim for unpaid taxes for various years supported by several "summary Record of Assessment" of "4340" computer data reports. Theses reports are certified and show the "23C" dates. Appellants argue that the IRS's claim is invalid absent production of the actual, signed underlying "23C" forms. These arguments are unavailing for the reasons stated by the Bankruptcy Court in its two orders and by the IRS in its brief. *See also e.g., Taylor v. Internal Revenue Service,* 69 F.3d 411, 418